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# REPORT OF SUBCOMMITTEE IV

OF THE

# COMMITTEE ON THE JUDICIARY

## HOUSE OF REPRESENTATIVES

SEVENTY-NINTH CONGRESS

SECOND SESSION

PURSUANT TO

## H. Res. 430

TO INVESTIGATE THE CIRCUMSTANCES WITH RESPECT TO THE DISPOSITION OF THE CHARGES OF ESPIONAGE AND THE POSSESSION OF DOCUMENTS STOLEN FROM SECRET GOVERNMENT FILES

OCTOBER 23, 1946.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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SUBCOMMITTEE NO. IV OF THE COMMITTEE ON THE JUDICIARY

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FRANK FELLOWS, Maine

## LETTER OF TRANSMITTAL

OCTOBER 23, 1946.

The Honorable SOUTH TRIMBLE,
*Clerk of the House of Representatives.*,

MY DEAR MR. TRIMBLE: In accordance with the terms of House Resolution 430, Subcommittee IV of the Committee on the Judiciary herewith transmits to you, as Clerk of the House of Representatives of the Seventy-ninth Congress, its report as ordered by said resolution, the House of Representatives not being in session.

Respectfully submitted.

SAM HOBBS,
*Chairman, Subcommittee IV,*
*Committee on the Judiciary.*

# REPORT OF SUBCOMMITTEE IV OF THE COMMITTEE ON THE JUDICIARY IN PURSUANCE OF HOUSE RESOLUTION 430

To the Honorable SOUTH TRIMBLE as Clerk of the House of Representatives of the 79th Congress:

Subcommittee No. IV of the Committee on the Judiciary, to which was assigned the duty required by House Resolution 430, makes the following report, the House not being in session:

I. The Committee on the Judiciary was authorized and directed by said resolution—

to make a thorough investigation of all the circumstances with respect to the disposition of the charges of espionage and the possession of documents stolen from secret Government files which were made by the Federal Bureau of Investigation "against Philip J. Jaffe, Kate L. Mitchell, John Stewart Service, Emmanuel Sigurd Larsen, Andrew Roth, and Mark Gayn," and to report to the House (or to the Clerk of the House, if the House is not in session) as soon as practicable during the present Congress, the results of its investigation, together with such recommendations as it deems necessary.

II. Prior to June 1945, information obtained by agencies of the Government and articles appearing in magazines, newspapers, and radio broadcasts had shown that Government files were not being as carefuly guarded as they should have been. Investigations were made by more than one agency of the Government for the purpose of ascertaining how such "leaks" could have occurred and who was responsible. The FBI and at least one other agency made a searching investigation.

On June 6, 1945, the Federal Bureau of Investigation, after a painstaking and careful investigation covering several months, and acting on warrants of arrest issued by a United States district judge, caused the arrest of Philip Jacob Jaffe and Kate Louise Mitchell, editor and coeditor, respectively, of Amerasia, a magazine published in New York City; Andrew Roth, a lieutenant in the United States Naval Reserve, stationed in Washington; Mark Julius Gayn, a magazine writer of New York City; and Emmanuel Sigurd Larsen and John Stewart Service, who were employees of the State Department in Washington, D. C.

At the time these arrests were made, searches and seizures, incident to the arrests based on warrants, were conducted in the offices or residences of the various of the arrested parties. Many "classified" Government documents or copies were found in the possession of some of them, the greater part of the documents pertaining to political matters in Japan, China, India, and Asia.

To understand the nature of these documents and papers, an explanation of security terms is essential. In most Government departments and agencies, papers and documents subject to security regulations are classified in one of four categories, defined as follows:

*"Top Secret."*—Certain secret material and information, the security aspect of which is paramount, and the unauthorized disclosure of

which would cause exceptionally grave danger to the Nation, or embarrassment to the Government, shall be classified as "Top Secret."

"*Secret.*"—Material and information, the unauthorized disclosure of which would endanger national security, cause injury to the interest or prestige of the Nation, or any governmental activity thereof, or would be of advantage to a foreign nation, shall be classified as "Secret."

"*Confidential.*"—Material and information, the unauthorized disclosure of which, while not endangering the national security, would be prejudicial to the interest or prestige of the Nation, or any governmental activity or individual, and would cause administrative embarrassment or difficulty, or be of advantage to a foreign nation, shall be classified "Confidential."

"*Restricted.*"—Material and information (other than "Top Secret" "Secret," or "Confidential") which should not be published or communicated to anyone, except for official purposes, shall be classified as "Restricted."

Any paper or document falling within any of such categories is properly identified as a "classified document." Security rules and regulations for the handling of "classified matter" were in force in the State Department, the Office of War Information (OWI), the Office of Strategic Services (OSS), the Office of Naval Intelligence (ONI), the Navy Department, Military Intelligence Division (MID), the War Department and other departments and agencies of the Government at the time the matters under investigation took place. In considering the types of "classified documents" seized by the FBI at the time the various parties were arrested, this report treats "duplicate originals" of classified documents as including mimeograph, hectograph, or ozalid copies and "copies" as including photostatic and typewritten copies.

Among the documents seized in the possession of Jaffe at the Amerasia office in New York City at the time of his arrest were 267 prepared by the State Department, including 2 copies of a top secret classification, 20 originals or duplicate originals and 14 copies of a secret classification, and 51 originals or duplicate originals and 14 copies of a confidential classification; 50 prepared by OSS, including 2 originals or duplicate originals and 1 copy of a secret classification and 11 originals or duplicate originals of a confidential classification; 19 prepared by ONI, including 1 original or duplicate original of a secret classification and 3 originals or duplicate originals of a confidential classification; 34 prepared by MID, including 9 copies of a secret classification, 1 original or duplicate original and 11 copies of a confidential classification; 58 prepared by OWI, including 3 copies of a secret classification, 1 original or duplicate original and 4 copies of a confidential classification.

Jaffe was affiliated with the National League of American Writers, American Council on Soviet Relations, National Council of American-Soviet Friendship, American League for Peace and Democracy, and American Friends of the Chinese People.

When Larsen was arrested at his home in Washington, D. C., the documents found in his possession and seized by the FBI included 93 from the files of, or prepared by, the State Department, including 14 originals or duplicate originals and 5 copies of a secret classification; 13 originals or duplicate originals and 3 copies of a confidential

classification; 144 from the files of, or prepared by, ONI, including 7 originals or duplicate originals of a secret classification and 24 originals or duplicate originals and 3 copies of a confidential classification; 8 from the files of, or prepared by, MID, including 1 secret original or duplicate original and 1 copy of a secret classification and 2 copies of a confidential classification; 9 from the files of, or prepared by, the War Department, including 2 copies of a secret classification and 3 originals or duplicate originals of a confidential classification; 8 from the files of, or prepared by, OSS, including 1 original or duplicate original of a confidential classification.

Larsen, when arrested, was a research specialist in the Far East Division of the Department of State. He had formerly served as a civilian specialist with ONI in Washington from October 1935 to August 1944, when he transferred to the State Department. His work in both places consisted of research and advisory work in Chinese matters.

At the time of the arrest of Andrew Roth in Washington, D. C., no secret or confidential documents or copies thereof were found in his possession. The records made available to this committee indicate, however, that Roth, who had been under surveillance, was the contact man or go-between for Jaffe in Washington. He was observed at various times transmitting envelopes to Jaffe or others connected with these transactions. Four items which were seized by the FBI in the possession of Jaffe, and which bore no official classification, were subjected to laboratory analysis, with the resulting disclosure that they were copies of official reports on Indian politics written in longhand by Roth, or typewritten on Roth's machine. Before his arrest, he had been working on the "Japanese fleet desk" in ONI and had been engaged in liaison work between the State Department and ONI. Prior to his entering the service, he had worked on the staff of Amerasia.

The arrests made by the FBI on June 6, 1945, were on charges of conspiracy to violate the Espionage Act during wartime. Jaffe, Mitchell, and Gayn, who were arrested in New York, were arraigned there and released on $10,000 bonds posted by each. Roth, Service, and Larsen were arraigned in the District of Columbia in the early hours of June 7, 1945, and their bonds set at $10,000 each.

The cases against the parties were again presented to a second grand jury from July 30, to August 8, 1945, during which time Mitchell, Gayn, and Service voluntarily waived immunity and appeared before that body. No indictments were returned against them. On August 10, 1945, true bills were returned against Jaffe, Larsen, and Roth, the indictments charging a violation of section 88 of title 18 of the United States Code by conspiring to violate sections 100, 101, 234 and 235 of title 18, United States Code, which are as follows:

*Section 100 of title 18—Embezzling public moneys or other property*

Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

*Section 101 of title 18—Receiving stolen public property*

Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels,

records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than $5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

*Section 234 of title 18—Destroying public records*

Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal, remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than $2,000, or imprisoned not more than three years, or both.

*Section 235 of title 18—Destroying records by officer in charge*

Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in section 234 of this title, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than $2,000, or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

Jaffe, Larsen, and Roth were arraigned on August 30, 1945, before Judge Henry Schweinhaut in the Federal District Court for Washington, D. C., and entered pleas of not guilty. At that time the bond for each was reduced from $10,000 to $2,500. Roth, through his attorney, filed a demurrer and request for a bill of particulars on September 27, 1945, and on September 28, 1945, Larsen, through his attorney, filed a motion to quash the indictment, a demurrer, and a motion to suppress the evidence. On October 2, 1945, Jaffe withdrew his plea of "not guilty" and entered a plea of guilty to the indictment. A fine of $5,000 was recommended by United States Attorney R. M. Hitchcock of the Department of Justice. The court imposed a fine of $2,500, which was the figure suggested and requested by Jaffe's attorney. On November 2, 1945, Larsen withdrew his former pleas and motions and entered a plea of "nolo contendere." A fine of $500 was suggested by the attorney for the Department of Justice and was imposed by the court. In each of these two cases it is to be noted that the Justice Department attorney recommended fines after stating in open court that the actions of the two defendants "did not involve any element of disloyalty." On January 18, 1946, a hearing was held before Judge James M. Proctor of the Federal District Court for the District of Columbia on Roth's motion for a bill of particulars. The Criminal Division of the Department of Justice was given 30 days in which to file this bill of particulars. Thereafter the Department, on February 13, 1946, entered a "nolle prosequi" in the case of Roth.

III. On June 22, 1945, a grand jury of the United States District Court for the District of Columbia began its inquisition. This proceeded for 8 days. During that time, or shortly thereafter, Mitchell, Gayn, and Service, waiving immunity, requested to be permitted to appear before a grand jury and testify in their own behalf.

While in many State courts no such practice is permitted, it seems quite common in Federal courts and, particularly, in the District of Columbia.

When defendants are allowed to appear and testify before grand juries they subject themselves to preliminary questioning by the prose-

cuting attorneys, and also to cross-examination, which is recorded. This frequently results in enabling the prosecution to make out a stronger case against defendants than could be established otherwise.

These written requests by Mitchell, Gayn, and Service were granted. They each appeared and testified before the second grand jury, the first having been discharged from further consideration of the case. All three of these defendants were questioned at length, and Mitchell and Gayn were cross-examined thoroughly.

The votes of at least 12 grand jurors in favor of indictment is required by law in order that such action may be taken. After the second grand jury had heard all of the oral evidence both for and against all 6 of the defendants and considered all of the documentary evidence, fewer than half of the required 12 voted for the indictment of any 1 of the 3, Mitchell, Gayn, and Service, and no more than 14 of the 20 grand jurors constituting the grand jury voted for the indictment of any 1 of the other 3. Of course, this meant that indictments were presented only against Jaffe, Larsen, and Roth.

IV. Not only was the attitude of the grand jurors indicative of what might be expected of petit jurors, but it should be borne in mind in considering the question of the wisdom, vel non, of the disposition of the charges, that the remaining defendants would be represented by competent counsel on their trial, and would have their own witnesses and their own testimony there, whereas before the grand jury only prosecution witnesses and prosecution attorneys had been heard.

V. The prosecution's case was further weakened by these facts:

1. In our governmental course of dealing, "classification" of documents was not standardized in practice. Frequently, if not usually, the writer or forwarder in a foreign country made the classification (grand jury minutes, vol. 1, pp. 51, 79). In part this was governed by his desire to have the material transmitted promptly and, since the higher the classification the greater the speed of transmission, unwarranted up-grading for speed was common.

2. Few, if any, of the identifiable classified documents involved in this case had any real importance in our national defense or our war effort.

3. Many had already been given wide publicity.

4. Many of the identifiable documents might have had their evidential value destroyed by reason of the possibility of the court's sustaining the defendants' motions attacking the warrants of arrest.

VI. Judicial decisions require scrupulous care to see that searches and seizures are reasonable. While search and seizure on arrest may be made without a search warrant, yet this is not so unless the warrant of arrest issued after "probable cause" of guilt had been established by legal evidence.

In *United States* v. *McCunn* (40 F. (2d) 295) there was a warrant for arrest upon a complaint which merely set forth the sources of information and the grounds for belief. The court said:

> The search and seizure were made without a search warrant, and therefore can be sustained, if at all, only if made as an incident of a lawful arrest, or if made with the consent of the defendants * * *.
>
> To enable a committing magistrate to determine whether there is probable cause for the issuance of a warrant, the sources of the information and the grounds of the belief must be stated with sufficient definiteness to enable him to determine whether a warrant should issue.

The warrant * * * was issued without the establishment of probable cause, and the arrest and the search and seizure incidental thereto must be held to be illegal.

(See: *United States* v. *McCunn et al.* (D. C., N. Y., 40 F. (2d) 295), and authorities therein cited.)

In the event the complaint was not based on complainant's personal knowledge and not supported by other proof, no jurisdiction would be conferred upon a commissioner to issue a warrant for arrest. This is substantiated by the language of *United States* v. *Gokey* (32 F. (2d) 793), as follows:

Consideration is first given to that part of the second ground or claim of illegal detention; i. e., that the complaint is insufficient at law to confer jurisdiction. The commission of a crime must be shown by facts positively stated before a commissioner has jurisdiction to issue a warrant of arrest. This protection is guaranteed to every person by the Constitution (fourth amendment) through the provision that "no warrant shall issue, but upon probable cause, supported by oath or affirmation." This safeguard of liberty has been jealously protected by all courts. And well it should be, for it would be intolerable to allow a warrant of arrest to be issued upon the opinion, conclusion, or suspicion of some person, unsupported by facts. The "oath or affirmation" required is of facts, not opinions or conclusions. The complaint must be supported by proof, so that the magistrate may exercise his judgment or discretion in determining that an offense has been committed, and that there is probable cause to believe the accused guilty of the commission thereof. If the complaint is made on information and belief, it must give the grounds of belief and sources of information. A complaint not based upon the complainant's personal knowledge, and unsupported by other proof, confers no jurisdiction upon the commissioner to issue a warrant (*U. S.* v. *Baumert* (D. C.) 179 F. 735; *U. S.* v. *Wells* (D. C.) 225 F. 320; *U. S.* v. *Ruroede* (D. C.) 220 F. 210; *In re Blum*, 9 Misc. Rep. 571, 30 N. Y. S. 396).

In this case there is not any claim that the immigration officer, who made the complaint, had any personal knowledge of the commission of the crime charged, or any other crime committed by King on September 11. This lack of personal knowledge was admitted upon the hearing. The complaint, therefore, becomes nothing more than a statement of the commission of a crime, based upon hearsay. Although made upon the positive oath of the complainant, it is in reality a complaint based upon information and belief, and nothing more. The positive averments of an official as to facts not within his personal knowledge may be enough to protect a commissioner, but they should not be sufficient to confer jurisdiction, in violation of the Constitution, and the numerous decisions of the courts. The complaint must, therefore, be held insufficient.

(See: *United States* v. *Gokey* (D. C. N. Y., 32 F. (2d) 793), and authorities therein cited.)

If the warrant for arrest was not issued on "probable cause" substantiated by facts, the evidence disclosed as a result of the search and seizure incident to the arrest based on such a warrant would be subject to suppression and, therefore, not usable as evidence of the crime for which the arrest was made. In *United States* v. *Lefkowitz* (285 U. S. 452) the Supreme Court stated:

The only question presented is whether the searches of the desks, cabinet and baskets and the seizures of the things taken from them were reasonable as an incident of the arrests. And that must be decided on the basis of valid arrests under the warrant. Save as given by that warrant and as lawfully incident to its execution, the officers had no authority over respondents or anything in the room. The disclosed circumstances clearly show that the prohibition agents assumed the right contemporaneously with the arrest to search out and scrutinize everything in the room in order to ascertain whether the books, papers or other things contained or constituted evidence of respondents' guilt of crime, whether that specified in the warrant or some other offense against the act. Their conduct was unrestrained. The lists printed in the margin show how numerous and varied were the things found and taken.

The fourth amendment forbids every search that is unreasonable and is construed liberally to safeguard the right of privacy (*Byars* v. *United States*, 273 U. S. 28, 32). Its protection extends to offenders as well as to the law abiding (*Weeks* v. *United States*, 232 U. S. 383; *Agnello* v. *United States*, 269 U. S. 20, 32). The authority of officers to search one's house or place of business contemporaneously with his lawful arrest therein upon a valid warrant of arrest certainly is not greater than that conferred by a search warrant issued upon adequate proof and sufficiently describing the premises and the things sought to be obtained. Indeed, the informed and deliberate determinations of magistrates empowered to issue warrants as to what searches and seizures are permissible under the Constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful searches is more likely to be attained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime (*United States* v. *Kirschenblatt*, 16 F. (2d) 202, 203; *Go-Bart Co.* v. *United States, supra*, 358).

Respondents' papers were wanted by the officers solely for use as evidence of crime of which respondents were accused or suspected. They could not lawfully be searched for and taken even under a search warrant issued upon ample evidence and precisely describing such things and disclosing exactly where they were (*Gouled* v. *United States*, 255 U. S. 298, 310). * * *

This case does not differ materially from the Go-Bart case and is ruled by it. An arrest may not be used as a pretext to search for evidence. The searches and seizures here challenged must be held violative of respondents' rights under the fourth and fifth amendments.

(See: *United States* v. *Lefkowitz et. al.* (U. S. Sup. Ct.) 285 U. S. 452; *United States* v. *Haberkorn* (CCA) 149 F. (2d) 720; *United States* v. *Hotchkiss* (D. C. Md.) 60 F. Supp. 405 and authorities therein cited.)

VII. "Classification" is a question for determination by the jury. The question as to whether information "relates to the national defense" within the purview of the Espionage Act is a question of fact for the jury under appropriate instructions from the court. The classifictaion given a document by an agency of the Government is not controlling.

The function of the court is to instruct as to the kind of information which is violative of the statute, and of the jury to decide whether the information secured is of the defined kind. It is not the function of the court, where reasonable men may differ, to determine whether the acts do or do not come within the ambit of the statute. The question of the connection of the information with national defense is a question of fact to be determined by the jury as negligence upon undisputed facts is determined. * * *

(See: *Gorin* v. *United States* (U. S. Sup. Ct. 312 U. S. 19), and authorities therein cited.)

VIII. Most of the "classified" items in question were copies. There were few, if any, original documents. Most, if not all, of the documents listed as originals or duplicate originals in the recapitulation heretofore set out were hectograph, ozalid, or mimeograph copies. The bulk of the records were not of recent date. Some were dated as early as 1936, were innocuous in content, and were and could have been generally known to anyone interested in the information they contained. Most of the items seized at Jaffe's office were typewritten copies. Some of such copies were proved to have been typed in one of the Government departments. It may be fairly inferred that the originals of such copies were never removed but that copies were made at the department or agency where the original reposed.

There was no proof that any of the records or copies were "stolen." Virtually all of the late 1944 and the 1945 items seized from Jaffe, which on their face indicated them to be Government property, were removed from the State Department. Many originated elsewhere,

but had been routed to State. Larsen had authority enabling him to take such items from the State Department, although under the regulations he could not retain them or disclose their contents. Although the various parties were frequently observed in the company of one another by trained investigators, no one of them was ever seen to deliver any Government items to another. In the Government agencies to which the various reports or documents were routed there was no real control or record of the whereabouts of copies.

IX. Of course, the law requires that every person charged with crime shall be presumed innocent until the evidence proves guilt beyond a reasonable doubt to the satisfaction of the jury. Jaffe had many of the "items" in his possession at the time of his arrest, and it could be proved that Larsen, at one time, handled a few of them. This at best would only establish a prima facie case against these two. No records or documents were found in Roth's possession. No Government items were ever seen to be passed from one subject to another, although all of them were under almost constant surveillance for some time. Most of the items dealt with personalities or political aspects in countries in the Far East. No criminal intent on the part of the subject parties was ever established, and there was no evidence that any of the documents or copies was ever put to any use harmful to the war effort. A study of the evidence made it clear that neither espionage nor spying could be proved. The cases were ably presented before the grand jury, but the net result of months of hard work was indictment of only 3 of the 6 accused, and in no case was the Government able to muster more than 14 of the 20 votes of the grand jurors.

No indictment was found charging espionage.

If it be thought that any one or more of the six who were originally accused should be further prosecuted on the charge of espionage, it may still be done.

The nolle prosequi ordered by the district judge on motion of the prosecuting attorneys constitutes no bar to the reinstatement of the prosecution against Roth.

X. In response to the question of "the disposition of the charges of espionage and the possession of documents stolen from secret Government files," as directed by House Resolution 430, the subcommittee charged with that duty must point out that neither grand jury that studied these cases under oath found that the evidence substantiated the charge of espionage. Neither grand jury charged the six accused, nor any one of them, with the crime of espionage.

Even if it were within the bounds of propriety—which it is not—for a congressional committee to question the conduct or conclusions of officials of another coordinate branch of our Government in the absence of justifying evidence, no reason to do so is revealed by the thorough investigation of all the circumstances with respect to this matter which has been made. After a most painstaking study, we certify that there is no evidence, nor hint, justifying adverse criticism of either grand jury, any prosecuting attorney, FBI, judicial, or other official.

Not only so, but also, the law requires, in the absence of proof to the contrary, that it be presumed that every officer has done his duty. Here, there is no evidence contra, however slight.

XI. For reasons already stated, we report our judgment that the same is true with respect to the disposition of the charge of possessing stolen documents.

XII. The evidence does disclose, however, an astonishing lack of "security" in some departments or agencies of our Government. There has been entirely too little safeguarding of documents. The recording, duplicating, and "control" have been deplorably negligent. It was impossible to determine, in many instances, from just what agency a particular item might have been taken. Lack of official control over copies invited unauthorized removal and control. Some agencies could not ascertain whether or not certain of their records were missing.

There has been certainly too little care taken in some departments in personnel procurement, particularly of those to be placed in positions of trust. At least one man was commissioned in our Navy without the approval and over the protest of the branch affected.

Too much trust has been reposed in employees, and without adequate supervision.

In one department "gold badges" were generally issued upon the recommendation merely of the division chief, with no special investigation save the routine check conducted by the personnel office before original employment. A "gold badge" wearer could go in or out of any State Department building virtually when he pleased, and go out with documents without inspection or question by the guards. Defendant Larsen was a "gold badge" employee of the State Department.

XIII. Recommendations.

House Resolution 430 limited the investigation thereunder to the circumstances with respect to the disposition of the charges of espionage and the possession of stolen documents. As to this, the subcommittee has made the thorough investigation and report the resolution directs, but deems no recommendation necessary.

However, our profound interest in the welfare of our Government impels us to go beyond our limited authority and make the following recommendations:

1. That the head of every department and agency of our Government see to it that more—much more—care be exercised in personnel procurement. That all those considered for Government positions in every echelon be investigated so thoroughly as to insure that no one be employed unless absolute certainty has been attained that nothing in background, present attitude, or affiliations raises any reasonable doubt of loyalty and patriotic devotion to the United States of America.

2. That the watchword and motivating principle of Government employment must be: None but the best. For the fewer, the better, unless above question.

3. That each and every present employee who fails to measure up to the highest standard should be discharged. No house divided against itself can stand.

4. That "classification" of documents should be better standardized. Present "classifications" should be revised and made more accurate.

5. That safeguards, and systems of recording and "control" should be perfected and employed.

Hon. Clarence Hancock, distinguished Member of Subcommittee No. 4 of the Committee on Judiciary, is prevented by his illness from participating in this report. He is physically unable to concur therein or dissent. We regret exceedingly that the subcommittee has been thus providentially deprived of his aid in formulating our report, although he sat with us in the hearings and studied the evidence with his usual diligence.

# MINORITY VIEWS OF FRANK FELLOWS, MEMBER OF THE COMMITTEE

During the war, documents of the State and other departments of Government, some marked "Top Secret," were taken from the files by certain individuals. Several hundred of these documents were found in New York City in the office of the publisher of a magazine called Amerasia. The publisher's name was Jaffe. The author of the resolution under which this committee assumed jurisdiction stated upon the floor of the House:

> The President authorized these arrests to be made and the arrests were forbidden by the State Department.

Following a debate, Resolution 430 passed the House. It provides for a thorough investigation of—

> all the circumstances with respect to the disposition of the charges of espionage and the possession of documents stolen from secret Government files.

Three men, viz, Jaffe, Larsen, and Roth, were indicted for conspiracy to violate sections 100, 101, 234, and 235 of title 18 of the United States Code.

Section 101 is as follows:

> *Section 101 of title 18—Receiving stolen public property*
>
> Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the same to have been so embezzled, stolen, or purloined, shall be fined not more than $5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender.

In the case of Mr. Roth, the Government entered a nolle prosequi.

In the case against Larsen, as stated by the majority report, a fine of $500 was suggested by the attorneys for the Department of Justice, and was imposed by the court after a plea of nollo contendere was offered by the defendant and accepted by the court.

Jaffe entered a plea of guilty to the indictment, and a fine of $5,000 was recommended by the United States Attorney R. M. Hitchcock, as stated in the majority report. The court imposed a fine of $2,500, which was the figure suggested and requested by Jaffe's own attorney.

I can agree with the committee report in part. I disagree with some of the conclusions drawn.

When Larsen was arrested at his home in Washington, D. C., the documents found in his possession and seized included:

> 93 from the files of, or prepared by, the State Department, including 14 originals or duplicate originals and 5 copies of a secret classification; 13 originals or duplicate originals and 3 copies of a confidential classification; 144 from the files of, or prepared by, ONI, including 7 originals or duplicate originals of a secret classification and 24 originals or duplicate originals and 3 copies of a confidential classification; 8 from the files of, or prepared by, MID, including 1 secret original or duplicate original and 1 copy of a secret classification and 2 copies of a confidential

classification; 9 from the files of, or prepared by, the War Department, including 2 copies of a secret classification and 3 originals or duplicate originals of a confidential classification; 8 from the files of, or prepared by, OSS, including 1 original or duplicate original of a confidential classification.

Larsen, when arrested, was a research specialist in the Far East Division of the Department of State. The Department of State had no system worthy of the name for protecting the files of that Department. A man with a gold badge could, without question, carry away any document he wished. All he needed was a gold badge, and this could be borrowed.

I can readily understand the committee's point that there would be difficulty in convicting Roth, who is referred to in the report as a naval officer advanced in rating over the objection of men in the Department.

I can readily understand some of the difficulties that might be encountered in prosecuting Larsen, as an individual. The charge, however, was conspiracy to violate certain sections of the United States Code.

The committee report states:

Jaffe had many of the "items" in his possession at the time of his arrest, and it could be proved that Larsen, at one time, handled a few of them. This at best would only establish a prima facie case against these two.

A prima facie case is a good place to start.

The majority report cites cases where the court scrupulously guarded rights of a man when arrested or while being placed under arrest or under a search and seizure respecting his own property, but neglects to point out that the court from the beginning has drawn a clear distinction between stolen or contraband property and property belonging to the defendant himself. These papers were not the property of the defendants; these papers were not from the defendants' personal files; these papers belonged to the Government of the United States.

In the case of Mr. Jaffe, who seemed to be the principal, I am unable to see why the Government accepted a $2,500 fine. He thought the Government had a case or he would not have paid even $500. The Government thought it had a case or it would not have presented it to the grand jury. He had filed no motion to suppress. At the time of his arrest the following papers were seized in the Amerasia office in New York City:

267 prepared by the State Department, including 2 copies of a top secret classification, 20 originals or duplicate originals and 14 copies of a secret classification, and 51 originals or duplicate originals and 14 copies of a confidential classification; 50 prepared by OSS, including 2 originals or duplicate originals and 1 copy of a secret classification and 11 originals or duplicate originals of a confidential classification; 19 prepared by ONI, including 1 original or duplicate original of a secret classification and 3 originals or duplicate originals of a confidential classification; 34 prepared by MID, including 9 copies of a secret classification, 1 original or duplicate original and 11 copies of a confidential classification; 58 prepared by OWI, including 3 copies of a secret classification, 1 original or duplicate original and 4 copies of a confidential classification. Jaffe was affiliated with the National League of American Writers, American Council on Soviet Relations, National Council of American-Soviet Friendship, American League for Peace and Democracy, and American Friends of the Chinese People.

He was photographing and publishing some of them, thereby, through the medium of his magazine, at least, selling the contents of

some of the classified documents of this Government at the time when the United States was fighting for its very existence. These papers were seized from Jaffe at the time of his arrest in his business establishment, where he was publishing a magazine. They were not his own documents. They were not seized as the result of searching his files. They were found in suitcases and pasteboard containers on the tables and desks of his business offices. I do not see how anybody could claim these papers were illegally seized. The circumstances clearly indicate that Roth, who had previously worked for him in this very office, was delivering papers to him. It appears that certain documents found in the possession of Jaffe at the time of his arrest were copies of official documents of various departments written in longhand by Roth or typewritten on Roth's machine. It also appears, as indicated by the majority report, and herein, supra, that Larsen at one time handled a few of the documents found in the possession of Jaffe at the time of his arrest.

Jaffe either took these documents himself, or his confederates took them for him. And two of the documents found were "Top Secret," so marked and so designated. I can see no point in arguing that these papers may not have been of much value. The thieves thought they were. The Government agencies so adjudged them. And the facts show that the defendants could have had their choice of any documents they wished; they were given no protection so far as the State Department was concerned.

The Justice Department attorney recommended fines, after stating in open court that the actions of the two defendants "did not involve any element of disloyalty." Disloyalty to whom? If a man or his confederate walks into the State Department and carries away top secrets of that Department during a great war, photographs them, publishes their contents, and sells them through the medium of his magazine, few people would see anything in such conduct that would come under the title of "loyalty" to the United States.

The report undertakes to argue the weakness of the Government's case.

First: It suggests that the classification was not standardized practice. The statute says nothing about this.

Second: That few, if any, of the identifiable classified documents had any real importance in our national defense. Who is to be the judge of this? May I call attention to the fact that one of the men who testified before our committee said that possession of one of these documents in particular was a threat against the security of this country.

Third: That many of these documents had already been given publicity. I have no recollection that more than one had been given publicity, and the publication of this one so aroused the State Department officials that they started at once to investigate the "leaks."

Fourth: The majority report states that many of the identifiable documents might have had their evidential value destroyed by reason of the possibility of the court's sustaining the defendant's motion attacking the warrants of arrest. This statement does not impress me, because (first) Jaffe did not file any motion to suppress, and (second) any one document possessed in violation of the statute could be sufficient.

I can agree with the committee that, under the decisions, scrupulous care has to be used that searches and seizures of a man's own papers and effects are reasonable, but it has not been pointed out to me what was unreasonable in the seizure of these papers. In any event, Mr. Jaffe and his counsel did not see fit to take any steps to suppress this evidence and the Department of Justice saw fit to present its case to the grand jury—presumably on this evidence.

The cases state that—

> Search without a warrant is permitted, for evidence connected with the crime and found on the person arrested, or open to view in his immediate vicinity.

Our Supreme Court stated years ago that search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment thereof, are totally different things from a search for and seizure of a man's private tools and papers for the purpose of obtaining information therein contained, or of using them as evidence against him (*Boyd* v. *U. S.* 116 U. S. 616; 29 L. Ed. 746, 6 Sup. Ct. 524).

I can agree with the committee that there are no recommendations to be made to the Department of Justice. These cases where fines were imposed are closed.

I heartily concur in the recommendations contained in the majority report.

The zeal and efficiency of the Federal Bureau of Investigation were commendable.

I do not question the motives or the good faith of the Department of Justice, nor any of its representatives who handled these cases, but I do disagree with its judgment in estimating the strength of the Government's case against Jaffe.

FRANK FELLOWS.

# ADDITIONAL MINORITY VIEWS BY RAYMOND S. SPRINGER

I desire to submit some additional views respecting the report just made by a majority of Subcommittee IV of the Judiciary Committee under House Resolution 430. This subject embraced in the report just made is treated altogether too lightly in the face of the grave situation which has and now obtains in the Department of State in our National Government.

The resolution, under which the investigation was made, directs that a—

> thorough investigation be made of all circumstances with respect to the disposition of the charges of espionage and the possession of documents stolen from secret Government files which were made by the Federal Bureau of Investigation against the following individuals: Philip J. Jaffe, Kate L. Smith, John Stewart Service, Emanuel Sigurd Larsen, Andrew Roth, and Mark Gayn.

After hearings were held by the subcommittee a report was made and signed by certain members of that subcommittee, which is now on file with the Clerk of the House of Representatives in Washington.

It is my firm and considered judgment, based upon the evidence adduced at the hearings, that the report made falls far short of expressing the views of some of the members of the subcommittee upon the subject under investigation.

Herewith, I desire to set forth my reasons for the above statement.

A. This transaction, or rather a series of transactions involved, embraces the unlawful removal of "top secret," "secret," "confidential," and "restricted" files from the Department of State, in our National Government. This is a very serious offense. In time of war, this is a most serious offense. When war is in progress, or even in time of peace, it is of little or no concern whether the files removed were "originals" or "copies," the fact that "information" of either or any classification was removed from the secret files in the Department of State and was delivered to any individual, or group of individuals, who had no lawful right to receive the same, is the essence of the offense. When that very secret information was thus unlawfully revealed to others, no matter how the same was imparted to Mr. Jaffe, whether by an original, or by copy, or by any other method, the real damage has been done.

B. There should not be any attempt made in the report to either minimize or acquit anyone from the magnitude of the act or acts committed. The report filed appears to at least attempt to either minimize or completely justify some of the unlawful acts which were undoubtedly committed.

C. The evidence introduced at the hearings shows, very conclusively, that the Security Division of the Department of State is "wholly inadequate," and that the so-called security in that Department was disorganized, inadequate, and wholly incompetent. When

employees left that Department, at any time, no search was made of any packages or large envelopes, or bundles, which were carried out of that Department. The evidence in the record is very clear upon that subject. If any changes or alterations have been made respecting security in that Department, which is worthy of the name of "security," the record fails to disclose the same. If any changes have been made since the hearings, I am not advised thereof.

D. It must be remembered that these documents, so unlawfully removed, were found in the office of Philip Jaffe, of New York. I do not know what the affiliations of this man Jaffe may be. Others have reported that he is at least a very strong sympathizer of communism. Regardless of what his beliefs may be, he had no right to receive any document, or any information from any document, from the Department of State. The knowledge imparted to him, and the information passed over to this man Jaffe, whoever or whatever he may be, is the unlawful act here involved.

E. The evidence presented at the hearings disclosed the sordid fact that Andrew Roth, a lieutenant (junior grade), in our Navy, was known to be a Communist by the board passing upon and granting commissions in the Navy, and that fact was so known at the time he was recommended for a commission as a lieutenant (junior grade) in the Navy.

F. The Department of State, and many of the departments of the Government, appear to "close their eyes" to communism, or those who believe in a totalitarian state, or in subversive activities, because they continue to employ them, and retain them, in the departments of Government. Those who are opposed to our form of government, and those who seek to "overthrow our form of government by force or violence" have no place in our Government, and certainly not in any office of trust or profit within our Government. The present condition wherein large numbers of employees, who are opposed to our form of government, are continued in their places of responsibility, in Government positions, is appalling. This practice is subject to censure.

G. All those who participated in any way in the removal, or attempted removal, of these documents from the Department of State—or who copied such reports and thereafter delivered such copies to Mr. Jaffe, or to any other person, not lawfully entitled to receive the same, should be prosecuted, and all those participating, in any degree in the unlawful acts under investigation, should be immediately discharged from their positions in our Government. The report should speak strongly and without any reservation upon that subject.

H. Those holding commissions in the Army or Navy who are known to be Communists, or who have participated in removing secret files, or imparting secret information, to the Communists, or to any other individual, or group of individuals are undoubtedly unfit to hold such commission—and the same should be canceled forthwith. Navy officers, either active or on reserve, who so believe or who have participated, should be dismissed and discharged.

I. The questions here involved are so grave, and the offenses so great, that no effort should be made to protect or defend those who

so offended, but the report should be made both firm and strong—to speak the truth—but to place the blame where the same rightfully belongs.

I concur, wholeheartedly, with the recommendations made, in the majority report, which appear at the close thereof, set forth under subheads 1, 2, 3, 4, and 5 under article XIII. However, it is my considered judgment and opinion that the question of "loyalty" to our form of government, and to our country, should be one of the paramount qualifications for all employees in their consideration. Those whose background is unsatisfactory, or whose affiliations are questionable, or those who fail to measure up to the "acid test" as Americans, should have no place in our departments of government, and all those in charge of the many and various agencies of our Government should be so admonished and instructed.

Therefore, by reason of the fact that the report fails to speak strongly upon the matters properly under investigation, I cannot join in the approval of the report with the exception of my concurrence with the recommendations which appear under subheads 1, 2, 3, 4, and 5 under article XIII, and I submit these minority and additional views.

Respectfully submitted.

RAYMOND S. SPRINGER.